

STATEMENTS OF POLICY

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 57]

Boating

The Fish and Boat Commission (Commission) adopts a statement of policy to read as set forth in § 57.81 (relating to policy on special boating regulations on waters with no public access). The Commission is publishing this statement of policy under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The statement of policy relates to boating.

A. *Effective Date*

This statement of policy will go into effect immediately upon publication of this order adopting the statement of policy.

B. *Contact Person*

For further information on the statement of policy, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P.O. Box 67000, Harrisburg, PA 17106-7000.

C. *Statutory Authority*

This statement of policy is published under the statutory authority of sections 322(2) and 5123 of the code (relating to rules and regulations; and general boating regulations).

D. *Purpose and Background*

In the past few years, the Commission has received a number of requests for regulations and formal petitions for regulations asking the Commission to impose and enforce special boating regulations on lakes with no public access. These requests for regulations are sometimes generated by property-owner groups or cottage associations. The number of these requests creates the need to spell out the Commission's policy for adopting and enforcing special boating regulations on lakes with no public access.

E. *Summary of the Statement*

The statement of policy encourages local interests to resolve issues related to lakes with no public access by means of deed restrictions, contract or agreement without resort to the regulatory process. The statement of policy also sets forth the limited conditions under which the Commission will consider exercising its regulatory discretion to make special boating regulations on these waters.

F. *Paperwork*

The statement of policy hereby adopted will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

The statement of policy will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The statement of policy imposes no new costs on the private sector or the general public.

H. *Public Involvement*

Because this order adopts a statement of policy, and not a regulation, the Commission was not required to publish a notice of proposed rulemaking in the *Pennsylvania Bulletin* or to solicit public comments.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The statement of policies of the Commission, 58 Pa. Code Chapter 57, are amended by adding § 57.81 to read as set forth at Annex A.

(b) The Executive Director will submit this order and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director will certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order will take effect immediately upon publication in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-63. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 57. STATEMENTS OF POLICY

Subchapter E. BOATING POLICIES

§ 57.81. Policy on special boating regulations on waters with no public access

(a) As used in this subchapter, the phrase "waters with no public access" means lakes, ponds, impoundments or other waters on which there is located no public access area, launch ramp or other launch facility owned, controlled or operated by Federal, State or local government agencies.

(b) The Commission has statutory authority to make and enforce special boating regulations for particular areas of water "limiting, restricting or prohibiting the operation or navigation of boats thereon to promote the interests of the public or to preserve aquatic life." See section 5124 of the code (relating to particular areas of water). The Commission's statutory authority to make general and special boating regulations preempts local regulation of boating—based on exercise of police powers—on the waters of this Commonwealth.

(c) It is the policy of the Commission to encourage local interests—residents, property owners and other users—to resolve issues relating to special boating restrictions on waters with no public access by means of agreement, deed, deed restriction or contract without resort to special boating regulations.

(d) It is the policy of the Commission to exercise its discretion to promulgate special boating regulations on waters of this Commonwealth with no public access only in circumstances when:

(1) The public interest and the interests of the boating public clearly show the need for the special regulations as evidenced by a formal resolution requesting the regulations approved by the governing body (for example, township supervisors, borough council, county commissioners) of the political subdivision in which the waters are located. The resolution also should include evidence of

the political subdivision's willingness to enforce the additional restrictions under to the reciprocal enforcement provisions of section 903 of the code (relating to delegation of enforcement powers).

(2) The Bureau of Law Enforcement determines that the proposed special boating regulations are readily enforceable without unduly diverting officers from enforcement activities on waters with public access.

(3) The proponent of the special regulations makes a clear and convincing showing that the proposed regula-

tions are necessary in the particular circumstances to provide for the health and safety of persons on, in and along the waters in question, including persons who boat on those waters, or to protect aquatic life in those waters or both.

[Pa.B. Doc. No. 97-80. Filed for public inspection January 17, 1997, 9:00 a.m.]
